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Renumbers FPM Ltr. 792-19,
dated 4/14/89. A new FPM
Ltr. 792-19 will be issued
at a later date.

Office of Personnel Management

Federal Personnel Manual System

FPM Letter 792-20

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chapter 792

RETAIN UNTIL SUPERSEDED

SUBJECT: Clarification of FPM Chapter 792, Federal
Employees Health and Counseling Programs

Washington, D. C. 20415
May 17, 1989

Heads of Departments and Independent Establishments.

1. The purpose of this Federal Personnel Manual (FPM) letter is to clarify the scope of Section 7901 of title 5 U.S.C. as it relates to Federal agencies' authority to utilize available appropriations to pay for smoking cessation programs for employees. Specifically, this legislation authorizes agencies to establish, within the limits of available appropriations, health services programs to promote and maintain the physical and mental fitness of their employees. Under §7901(c)(4), agencies may establish preventive programs relating to health.

2. A recent decision by the Comptroller General of the United States (B-231543 dated February 3, 1989 -- copy attached) held that under §7901, Federal agencies have the authority to utilize appropriated funds to pay the costs incurred by employees participating in agency-authorized smoking cessation programs. The decision held that because smoking is a major contributing cause of illnesses such as cancer, coronary disease and emphysema, smoking cessation programs are "preventive" in nature and authorized by §7901(c)(4).

3. This decision modifies an earlier opinion by the Comptroller General [64 Comp. Gen. 789 (1985)] which held that any expenditures incurred on account of the participation by Federal employees in a smokers rehabilitation program would constitute personal medical treatment that could not be paid for with appropriated funds and were not authorized under §7901.

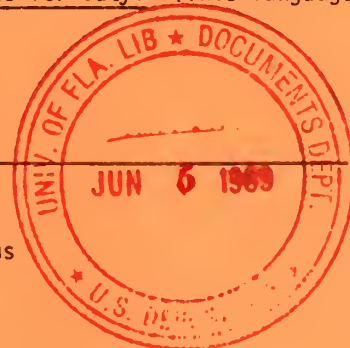
4. The recent Comptroller General decision stated, however, that before agencies may incur costs associated with employee participation in smoking cessation programs, the U.S. Office of Personnel Management (OPM) would have to amend the FPM to add smoking cessation as a prevention activity that agencies may include as part of the health services programs they provide their employees.

5. Therefore, FPM chapter 792 is amended with the following language (added language is underlined and deleted language is bracketed):

a. Subchapter 1, Section 1-3(c)(5) - Preventive services [within the competence of the professional staff] to (a) appraise and report work environment health hazards to department management as an aid in preventing and controlling health risks; (b) provide health education to encourage employees to maintain personal health; (c) provide health service programs (including smoking cessation programs) to promote and maintain employees' physical and mental fitness and to prevent illness and disease; (d) provide specific disease screening examinations and immunizations, as the department or agency head determines to be necessary; and (e) establish and operate physical fitness programs and facilities designed to promote and maintain employee health.

b. Subchapter 4, Section 4-4 - Prevention of illness and disease. Health services programs which focus on preventing illness and disease (including smoking cessation programs) help to promote and maintain employees' physical and mental fitness for duty. (This language added as a new preventive activity under section 4-4).

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Distribution: Basic FPM



6. OPM supports and encourages agency authorized programs aimed at health promotion and disease prevention, including smoking cessation programs. According to reports issued by the Surgeon General, smoking is the chief avoidable cause of death in our society. Programs designed to help employees stop smoking are in the best health interests of those Federal employees who smoke and those who do not smoke. These programs may also contribute to improved organizational performance and productivity. However, before authorizing payment for a smoking cessation program, agencies are encouraged to carefully review the nature of the program and the credentials of the organization offering it.

7. Attached to this letter is a resource listing to assist agencies in establishing and/or locating programs designed to help employees stop smoking. OPM's Employee Health Services staff is also available to provide additional information on smoking cessation programs.

A handwritten signature in dark ink, appearing to read "Constance Horner", written in a cursive style.

Constance Horner
Director

Attachments

Comptroller General of the United States

Decision B-231543

February 3, 1989

SMOKING CESSATION PROGRAMS FOR FEDERAL EMPLOYEES



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Smoking Cessation Program for Federal Employees

File: B-231543

Date: February 3, 1989

DIGEST

Under 5 U.S.C. § 7901, Federal agencies have authority to establish smoking cessation programs for their employees and to use appropriated funds to pay the costs incurred by employees participating in these programs. However, before such programs can be implemented, the Office of Personnel Management would have to amend the Federal Personnel Manual to add smoking cessation as a prevention activity that agencies can include as part of the health services program they provide their employees. 64 Comp. Gen. 789 (1985) is modified accordingly.

DECISION

This decision is in response to a request from the Department of the Treasury, dated May 17, 1988, regarding the availability of appropriated funds "to pay for employees of the Internal Revenue Service (IRS) to attend smoking cessation programs." As recognized by the Treasury Department in its submission, we concluded in 64 Comp. 789 (1985) that any expenditures incurred on account of the participation by federal employees in a smokers rehabilitation program would constitute a personal medical expense of the employees involved that could not be paid with appropriated funds. As requested by the Treasury Department, we have reconsidered our position on this issue, and conclude that 5 U.S.C. § 7901 authorizes agencies to use appropriated funds to pay the costs incurred by employees participating in smoking cessation programs. However, before the IRS may incur such costs, the Office of Personnel Management (OPM) should modify its regulations to include smoking cessation as a type of health service that agencies can provide their employees. 64 Comp. Gen. 789 (1985) is modified accordingly.

BACKGROUND

In 64 Comp. Gen. 789 (1985), we addressed the question whether appropriated funds could be used "to pay for a smokers' rehabilitation program for all smoking employees who desire to 'kick the habit'." The submission characterized the proposed smoking cessation program as "medical treatment for smokers."^{1/} Viewing the question from that perspective, we responded as follows:

" . . . We have consistently held that medical care and treatment are personal expenses of an employee and their payment may not come from appropriated funds unless specifically authorized under a contract of employment or by statute or regulation. 63 Comp. Gen. 96, 97 (1983). See also 57 Comp. Gen. 62 (1977), 53 Comp. Gen. 230, 231 (1973) and cases cited therein.

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"Accordingly, there is no legal basis for using appropriated funds to pay the personal medical expenses of Federal employees that would be incurred as a result of their participation in a smokers' rehabilitation program. It is important to note, however, that this conclusion does not impair the authority of agencies to conduct programs designed to promote and maintain employee mental and physical health short of treatment and rehabilitation. See 5 U.S.C. § 7901"

The IRS contends that 5 U.S.C. § 7901 "is sufficiently broad to include a smoking cessation program." That provision authorizes federal agencies to establish, within the limits of available appropriations, a health service program to promote and maintain the physical and mental fitness of their employees. 5 U.S.C. 7901(a).

For purposes of section 7901, a health service program is limited to the following:

"(1) treatment of on-the-job illness and dental conditions requiring emergency attention;

"(2) preemployment and other examinations;

^{1/} In fact, the only use of appropriated funds at issue was a proposed expenditure to reimburse employees for the cost of nicotine gum prescribed by a doctor.

"(3) referral of employees to private physicians and dentists; and

"(4) preventive programs relating to health."
5 U.S.C. 7901(c) (emphasis added).

IRS maintains that its proposed smoking cessation programs are clearly "preventive" in nature. IRS reasons that "smoking" is not a disease per se; rather, as medical research has shown, smoking is a major contributing cause of such illnesses as cancer, coronary disease, and emphysema. Since smoking cessation programs address the cause of significant adverse health effects, such programs, by definition, are "preventive programs" authorized by 5 U.S.C. § 7901(c)(4). We agree.

ANALYSIS

As we held in 64 Comp. Gen 789, the costs of medical care or treatment for civilian government employees are personal to the employees, and appropriated funds may not be used to pay them unless provided for by statute or in the contract of employment. See also B-226569, November 30, 1987. However, our decision in 64 Comp. Gen. 787 concerning smoking cessation programs accepted without question the characterization of such programs as medical care. Little, if any, consideration was given to viewing such programs as "preventive programs relating to health" authorized by 5 U.S.C. § 7901(c)(4).2/

Overwhelming medical evidence exists that demonstrates the adverse health effects smoking has on smokers as well as non-smokers exposed to "passive" tobacco smoke in their environment. Although a lengthy discussion of the extensive medical research and numerous studies concerning the health effects of smoking is unnecessary, the following excerpt from the preface to a recent report of the Surgeon

2/ Even if an employee's participation in a smoking cessation program is viewed as personal medical care or treatment, the use of appropriated funds to provide such medical treatment to an employee would not be prohibited if authorized by statute. Thus, the issue to be resolved would remain the same--does smoking cessation qualify as a preventive program relating to health that would be authorized by 5 U.S.C. § 7901(c)(4)?

General of the United States^{3/} effectively summarizes the results of such research:

"Previous reports have reviewed the medical and scientific evidence establishing the health effects of cigarette smoking and other forms of tobacco use. Tens of thousands of studies have documented that smoking causes lung cancer, other cancers, chronic obstructive lung disease, heart disease, complications of pregnancy, and several other adverse health effects.

"Epidemiologic studies have shown that cigarette smoking is responsible for more than 300,000 deaths each year in the United States. As I stated in the Preface to the 1982 Surgeon General's Report, smoking is the chief avoidable cause of death in our society." (Emphasis added.)

In our view, programs designed to help employees avoid "the chief avoidable cause of death in our society" qualify as "preventive programs relating to health" as that phrase is used in 5 U.S.C. § 7901(c)(4). In addition, smoking cessation programs would have a beneficial impact on maintaining the health of non-smoking employees exposed to tobacco smoke in the workplace. The adverse effect of such passive smoking on the health of non-smokers has received considerable attention in recent years.^{4/} In December 1986, the General Services Administration (GSA) adopted regulations governing smoking in GSA-controlled buildings which recognized that "smoking adversely affects the health of those persons passively exposed to tobacco smoke." 51 Fed. Reg. 44259 (1986). The regulations adopted by GSA limit smoking "to an absolute minimum in areas where there are non-smokers." See 41 C.F.R. § 101-20.109-10(a)(1) (1987). Thus, apart from the direct benefit to smokers, the establishment of smoking cessation programs would help

^{3/} The Health Consequences of Smoking: NICOTINE ADDICTION, report of the Surgeon General for 1987, p. iii.

^{4/} For example, the 1986 report of the Surgeon General on the health consequences of smoking dealt specifically with the issue of passive or "involuntary smoking".

reduce the amount of tobacco smoke in the federal workplace and its adverse effect on the health of non-smokers.^{5/}

Our interpretation of 5 U.S.C. § 7901(c)(4) is consistent with our prior interpretation of that provision. In 64 Comp. Gen. 835 (1985), a National Park Service certifying officer asked whether he could certify for payment several billings arising from the operation of a physical fitness program by the Park Service Alaska Regional Office. Relying on 5 U.S.C. § 7901(c)(2) and (4) and implementing regulations, we approved payment for the cost of comprehensive physical fitness evaluations and blood tests for employees. While we would not approve payment of bills from a private health club for employees' use of the club's exercise facilities, our conclusion was based on the restrictive nature of the regulations, not on the lack of statutory authority. We said that the statutory language was "sufficiently broad to encompass the physical fitness program operated by the Alaska Regional Office". While our holding in 64 Comp. Gen. 835 supports our position here, that decision highlights the need for OPM to revise its regulations to include smoking cessation as a health service agencies can provide their employees.^{6/}

Although OPM's regulations presently do not include smoking cessation as a permissible component of a disease prevention program, the Department of the Treasury provided us with a copy of a letter, dated February 5, 1988, from OPM to the Department, indicating OPM's willingness to amend the regulations based on a favorable opinion from our Office. That letter reads as follows:

"We are in the process of reviewing FPM Chapter 792 and its supplements and agree that our guidance on smoking cessation programs should be

^{5/} We have previously approved the use of appropriated funds to purchase and install air purifiers where they will provide a benefit to all employees in a general area. 64 Comp. Gen. 789 (1985); 62 Comp. Gen. 653 (1983); B-215108, July 23, 1984.

^{6/} In response to our decision, OPM revised its regulations to include the establishment and operation of "physical fitness programs and facilities designed to promote and maintain employee health" in its list of appropriate preventive health services. See Federal Personnel Manual (FPM), ch. 792 (Inst. 261, Dec. 31, 1980), as amended by FPM letter 792-15 (April 14, 1986).

reexamined in light of recent developments in the employee health field. In addition, we are hopeful that your request to GAO to revisit the earlier opinion on smoking cessation programs will help clarify whether programs such as the one you are planning can be paid for with appropriated funds. In this regard, OPM will make appropriate amendments to the FPM to reflect a revised GAO opinion." (Emphasis added.)

Accordingly, it is our view that 5 U.S.C. § 7901(c)(4) authorizes the establishment of smoking cessation programs for federal employees. Therefore, if OPM amends the Federal Personnel Manual by adding smoking cessation to the list of disease prevention activities that agencies can provide their employees as part of their health service programs, we would not object to the IRS's use of its appropriated funds to pay the costs incurred by its employees who participate in a smoking cessation program. 64 Comp. Gen. 789 is modified accordingly.



Acting Comptroller General
of the United States

RESOURCES AND INFORMATION ON

SMOKING CESSATION AND REDUCTION PROGRAMS

RESOURCES AND INFORMATION ON SMOKING CESSATION AND REDUCTION PROGRAMS

FEDERAL GOVERNMENT ORGANIZATIONS

Office on Smoking and Health
Centers for Disease Control
Public Health Service
5600 Fishers Lane
Rockville, Maryland 20857
FTS/301 443-1575

Office of Real Property Management
and Safety
Public Building Service
General Services Administration
18 and "F" Sts., N.W. Room 4340
Washington, D.C. 20405
FTS/202 556-0971

Employee Health Services Branch
Employee Relations Division
U.S. Office of Personnel Management
1900 "E" St., N.W. Room 7412
Washington, D.C. 20415
FTS/202 632-5558

RESOURCES AVAILABLE

The Federal focal point for activities on smoking and health. Serves as the national and world center for scientific and technical information. Produces the Surgeon General's annual report related to smoking and health, carries out a public education program, and a tobacco epidemiology program. Offers several publications free of charge, including a directory that describes national and local programs designed to help reduce smoking.

Responsible for regulations on smoking in GSA-controlled Federal buildings and facilities. Each Federal agency head is responsible for implementing and enforcing the GSA regulations and establishing designated smoking areas.

Responsible for Federal employee health and assistance-related personnel policy guidance, and technical assistance.

OTHER ORGANIZATIONS

American Cancer Society
National Headquarters
1599 Clifton Road, N.E.
Atlanta, Georgia 30329
(404) 320-3333 or call the local
number listed in the telephone
directory.

Washington, D.C. Area:
1825 Conn. Ave., N.W., Suite 315
Washington, D.C. 20009
(202) 483-2600

RESOURCES AVAILABLE NATION-WIDE

- "Smart Move" is a 1-hour orientation program.
- "FreshStart" quit smoking clinics are led by trained volunteers as facilitators and involve four 1-hour group sessions over a two week period (includes materials).
- Pamphlets - "Danger," "The Decision is Yours," "Facts on Lung Cancer," and "A Decision Maker's Guide to Reduce Smoking at the Work Place."
- Videos (VHS) - anti-smoking films: "Why Quit Quiz," "Smart Move," and "Where There is No Smoke."
- Materials and programs are free of charge.

OTHER ORGANIZATIONS CON'T

American Heart Association
National Center
7320 Greenville Avenue
Dallas, Texas 75231
(214) 750-5300 or call the local
number listed in the telephone
directory.

Washington D.C. Area:
2233 Wisconsin Ave., N.W.
Washington, D.C. 20007
(202) 337-6400

American Lung Association
Headquarters
1740 Broadway
New York, New York 10019
(212) 315-8700 or call the local
number listed in the telephone
directory.

Washington D.C. Area:
425 "H" Street, N.W.
Washington, D.C. 20005
(202) 682-LUNG

General Conference of Seventh
Day Adventists
6840 Eastern Avenue, N.W.
Washington, D.C. 20912
Toll-free #1 (800) 253-3000
(202) 722-6724

Smokers Anonymous
Call the local number listed
in the telephone directory.

RESOURCES AVAILABLE

- "Heart at Work" is an intervention program designed for implementation at the worksite. It includes a module on smoking reduction containing two components: a model smoking policy and self-help smoking cessation kit - \$30.00..
- Brochure - "Calling It Quits" - \$7.00 per hundred.
- Video tape - "In Control" ® - \$72.00 (participant manual \$20.00).
- "Freedom From Smoking" (FFS) ® group clinics. FFS clinics (8 weeks - 1 hour per week) \$40.00 to \$120.00 per participant depending on the locale.
- Self-Help Manuals: FFS Self-Help Manual - \$7.00; FFS for You and Your Family - \$7.00; FFS for You and Your Baby - \$8.00; and A Life Time of FFS - \$5.50.
- "In Control" ® video program (tape, workbook, and audio tape) - \$59.95 (can be rented for a small fee).
- "Team-up for FFS" - comprehensive 18 month work-site program that includes: policy development, education, stop smoking programs, and maintenance activities. It involves smokers and non-smokers. Cost varies by locale.
- Other materials and pamphlets are also available.
- "Breathe Free Plan to Stop Smoking" clinic. Lectures and group discussions. Emphasizes motivation and lifestyle modification strategies and consists of eight sessions over 3 weeks.
- Work-site plans available depending on local resources. Small registration fee charged.
- Smokers Anonymous is a self-help group available in some communities.

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